

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DAMIEN DREIS,

Plaintiff,

vs.

DEARBORN NATIONAL LIFE
INSURANCE COMPANY, a foreign
corporation,

Defendant.

Case No. 2:14-cv-00620-MJP

**DEFENDANT'S SUPPLEMENTAL
PROPOSED JURY INSTRUCTIONS AND
PROPOSED SPECIAL VERDICT FORM**

Defendant Dearborn National Life Insurance Company hereby submits the following proposed supplemental jury instructions and proposed special verdict form.

A. Defendant's Proposed Supplemental Jury Instructions

Defendant's first proposed supplemental jury instruction is identical to the instruction Defendant previously submitted in the parties' Joint Statement of Disputed Instructions regarding the duty element of Plaintiff's claim for negligent misrepresentation by failure to disclose (ECF No. 52 at 13). The Court's preliminary instructions did not include this instruction, and Defendant previously took exception its absence. Defendant believes that this instruction remains necessary in light of the factual dispute about whether Dearborn National had the type of relationship of trust and confidence that could support such a duty.

1 Dearborn National also maintains that it is necessary to submit this question to the jury
2 directly in a special verdict form as required by WPI 165.03.01 and illustrated by
3 WPI 165.03.02.

4 Defendant's second proposed supplemental jury instruction is Defendant's instruction on
5 damages. This is modified from the damages instruction previously submitted by Defendant.
6 (ECF No. 52 at 20.) This modification removes any reference to damages for emotional distress,
7 including for Plaintiff's fraud claim. Plaintiff has put forward no evidence that supports the
8 claim that Plaintiff suffered compensable emotional distress as a result of any alleged
9 misrepresentation by Dearborn National (as opposed to emotional distress stemming from the
10 RIF itself). Accordingly, allowing the jury to consider emotional distress in formulating any
11 damage award would be error.

12 **B. Defendant's Proposed Special Verdict Form**

13 Dearborn National re-submits its special verdict form as previously submitted. (ECF No.
14 52, at 36–38.) In response to Plaintiff's objection regarding the inclusion of the burden of proof
15 in the special verdict form (*see* ECF No. 52 at 39:1, 10–11, and 20–21), Dearborn National
16 requests that the Court take note that the Washington Pattern Jury Instructions – Civil expressly
17 provide that “When plaintiff's burden of proof is something other than a preponderance of the
18 evidence, practitioners should specify the burden in the special verdict form.” WPI 165.03.02,
19 Comment.

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1
2 Dated: September 11, 2015

/s/ Thomas P. Holt

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DEARBORN NATIONAL LIFE

INSURANCE COMPANY, a foreign
corporation

1 **Defendant's Proposed Supplemental Jury Instruction No. 1**

2 Duty to Disclose—Mixed Issues of Fact And Law

3 Damien Dreis has the burden of proving that Dearborn National owed him a duty to
4 disclose to him the amount of the severance offer he would have received had he not resigned.

5 In deciding whether this burden has been met, you are to consider whether the following
6 fact has been proved:

7 Whether a special relationship of trust and confidence existed between Dearborn National
8 and Damien Dreis such that Dearborn National purported to act or advise Mr. Dreis with Mr.
Dreis's interest in mind.

9 You have been given a special verdict form that asks you whether this fact has been
10 proved. Fill in the special verdict form according to your answer. Follow the directions on the
11 special verdict form for what to do next.

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24 Authority: WPI 165.03.01 (6th ed.) (modified)

1 **Defendant's Proposed Supplemental Jury Instruction No. 2**

2 Damages

3 It is the duty of the Court to instruct you about the measure of damages. By instructing
4 you on damages, the Court does not mean to suggest for which party your verdict should be
5 rendered.

6 If you find for the plaintiff, you must determine the plaintiff's damages. The plaintiff has
7 the burden of proving damages by clear, cogent, and convincing evidence. Damages means the
8 amount of money that will reasonably and fairly compensate the plaintiff for any injury you find
9 was caused by the defendant. You should consider the amount Damien Dreis would have been
10 offered as a severance payment, \$607,779.84.

11 It is for you to determine what damages, if any, have been proved. Your award must be
12 based upon evidence and not upon speculation, guesswork or conjecture.
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22 Authority: 9th Circuit Model Federal Civil Jury Instructions 5.1 and 5.2 (modified)
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1 **Defendant's Proposed Verdict Form**

2 We, the jury, answer the questions submitted by the court as follows:

3 QUESTION 1: Was Larry Meitl acting as Dearborn National's agent in his discussions
4 with Damien Dreis about severance? (See Jury Instruction No. __.)

5 ANSWER: (Write "yes" or "no") _____

6 *(DIRECTION: If your answer is "no," your verdict is for Dearborn National and against*
7 *Damien Dreis. Skip the remaining questions, sign this verdict form, and notify the bailiff. If*
8 *your answer is "yes," answer Question 2.)*

9
10 QUESTION 2: Do you find that Damien Dries has proved his negligent
11 misrepresentation by affirmative misstatement claim by clear, cogent, and convincing
12 evidence? (See Jury Instruction No. __.)

12 ANSWER: (Write "yes" or "no") _____

13 *(DIRECTION: If your answer is "no," skip Question 3 and answer Question 4. If your answer is*
14 *"yes," answer Question 3.)*

15
16 QUESTION 3: What is the total amount of Damien Dreis's damages that were
17 proximately caused by Dearborn National's affirmative misstatement?

18 ANSWER: \$ _____

19 *(DIRECTION: Answer Question 4.)*

20
21 QUESTION 4: Did Damien Dreis prove by clear, cogent, and convincing evidence that a
22 special relationship of trust and confidence existed between Dearborn National and
23 Damien Dreis such that Dearborn National purported to act or advise Mr. Dreis with Mr.
24 Dreis's interest in mind? (See Jury Instruction No. __.):

24 ANSWER: (Write "yes" or "no") _____

25 *(DIRECTION: If your answer is "yes," then proceed to consider the other elements of Damien*
26 *Dreis's negligent misrepresentation by failure to disclose claim and answer Question 5. If your*

1 answer is “no,” then your verdict is complete for this claim, and you should also answer “no” to
2 Question 5, skip Question 6, and answer Question 7.)

3
4 QUESTION 5: Do you find that Damien Dries has proved his negligent
5 misrepresentation by failure to disclose claim by clear, cogent, and convincing evidence?
(See Jury Instruction No. __.)

6 ANSWER: (Write “yes” or “no”) _____

7 (DIRECTION: If your answer is “no,” skip Question 6 and answer Question 7. If your answer is
8 “yes,” answer Question 6.)

9
10 QUESTION 6: What is the total amount of Damien Dreis’s damages that were
11 proximately caused by Dearborn National’s failure to disclose?

12 ANSWER: \$ _____

13 (DIRECTION: Answer Question 7.)

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15 QUESTION 7: Did Damien Dreis’s own negligence contribute to his total amount of
16 damages?

17 ANSWER: (Write “yes” or “no”) _____

18 (DIRECTION: If you answered “yes” to either Question 2 or Question 5, answer Question 7 and
19 Question 8. If you answered “no” to both Question 2 and Question 5, skip Question 7 and
20 Question 8, and answer Question 9.)

21 QUESTION 8: Assume that 100% represents the total combined fault that proximately
22 caused Damien Dreis’s damages. What percentage of this 100% is attributable Dearborn
23 National’s negligence, and what percentage of this 100% is attributable to Damien
24 Dreis’s own negligence? Your total must equal 100%

25 ANSWER:

26 To Dearborn National: _____ %

To Damien Dreis: _____ %

Total: 100%

(DIRECTION: Answer Question 9.)

QUESTION 9: Do you find that Damien Dries has proved his fraud claim by clear, cogent, and convincing evidence? (See Jury Instruction No. __.)

ANSWER: (Write "yes" or "no") _____

(DIRECTION: If you answered "no," skip Question 10 and answer Question 11. If you answered "no," and also answered "no" to Question 2 and Question 5, your verdict is for Dearborn National and against Damien Dreis, and you should skip Question 10 and Question 11, sign this verdict form, and notify the bailiff. If you answered "yes" to Question 9, answer Question 10.)

QUESTION 10: What is the total amount of Damien Dreis's damages that were proximately caused by Dearborn National's fraud?

ANSWER: \$ _____

(DIRECTION: Answer Question 11.)

QUESTION 11: Do Damien Dreis's damages include any amount of wages?

ANSWER: (Write "yes" or "no") _____

(DIRECTION: Sign this verdict and notify the bailiff.)

DATE:

PRESIDING JUROR

1 **CERTIFICATE OF SERVICE**

2 I am a resident of the State of Washington, over the age of eighteen years, and not a party
3 to the within action. My business address is One Union Square, 600 University Street, Ste. 3200,
4 Seattle, WA 98101. I hereby certify that on September 11, 2015, I electronically filed the
5 foregoing **DEFENDANT'S SUPPLEMENTAL PROPOSED JURY INSTRUCTIONS AND**
6 **PROPOSED SPECIAL VERDICT FORM** with the Clerk of the Court using the CM/ECF
7 system, which will send notification of such filing to the Honorable Marsha J. Pechman and to
8 the following:
9

10 **Attorneys for Plaintiff**

11 **Michael S. Wampold, WSBA #26053**
12 **Mallory C. Allen, WSBA #45468**
13 **PETERSON WAMPOLD ROSATO LUNA KNOPP**
14 **1501 Fourth Ave., Suite 2800**
15 **Seattle, WA 98101-1609**

16 I certify under penalty of perjury under the laws of the State of Washington that the
17 foregoing is true and correct.

18 Dated September 11, 2015

19 /s/ Leili Moore
20 Leili Moore
21 LEMoore@littler.com
22 **LITTLER MENDELSON, P.C.**

23
24 Firmwide:135836543.1 075686.1002